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No. 156

In the Supreme Court of the United States

OCTOBER TERM, 1961

MORROW RADIO MANUFACTURING CO., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court (R. 19–22) is reported at 179 F. Supp. 436. The opinion of the court of appeals (Pet. A1–A9) is reported at 287 F. 2d 502.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 1961. (Pet. A10.) Successive petitions for rehearing were denied on March 20, 1961 (Pet. A10–A11), and on March 30, 1961 (R., Vol. II, 15). The petition for a writ of certiorari was filed on June 16, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether certain items of radio equipment manufactured and sold by the taxpayer are "radio * * * components" subject to the manufacturers' excise tax under Sections 4141 and 4142 of the Internal Revenue Code of 1954.

STATUTES AND REGULATIONS INVOLVED

Sections 4141 and 4142 of the Internal Revenue Code of 1954 (26 U.S.C.) and §§ 40.4141–1 and 40.4142–1 of the Treasury Regulations on Manufacturers Excise Taxes (1954 Code) are set forth at pp. A11–A17 of the petition.

STATEMENT

Petitioner is engaged in the manufacture and sale of radio receivers, converters (tuners), power supply units, and speakers. The equipment is designed primarily for use by amateur radio operators. Each unit is manufactured and sold in a separate cabinet and must be combined with one or more of the other units (or those of other manufacturers) and an antenna to operate as a complete radio receiving set (Pet. A1–A2).

This is a suit for refund of $1,658.03 paid by petitioner as manufacturers' excise taxes on articles sold during the period October 1, 1955, to September 30, 1958. The United States counterclaimed for $10,533.60 in additional taxes for the same period. The district court held that all of the articles involved were "radio * * * components" subject to the 10 percent excise tax imposed by §§ 4141 and 4142 of the

Internal Revenue Code of 1954 (R. 19–29). The court of appeals affirmed (Pet. A1–A9).

ARGUMENT

Section 4141 of the Code (Pet. A11) imposes a tax on the sale by the manufacturer of "Radio receiving sets" and of "Radio and television components."[1] Section 4142 defines "components" to mean "chassis, * * * speakers, * * * [and] power supply units * * * which are suitable for use on or in connection with, or as component parts of any of the articles enumerated in section 4141 [*i.e.*, "Radio receiving sets"], whether or not primarily adapted for such use." Petitioner contends (1) that its receivers and converters are not properly classifiable as "chassis" and hence are not enumerated in § 4142; and (2) that, except for the speakers, none of its articles are "suitable for use * * * as component parts of" the relevant article, "Radio receiving sets." Neither contention is sound.

1. The regulations define "chassis" as including "any assembly of parts into circuits for the reception and conversion of radio * * * signals into impulses suitable for the reproduction of * * * sound by a

[1] The tax on sets, but not on components, is limited to those "of the entertainment type" (§ 4141). The taxpayer has not sought review of the holding below that none of its units constituted "sets", which would be exempt from tax because not of the entertainment type.

References are to the statute as in effect for the years in suit. The Excise Tax Technical Changes Act of 1958, § 113, 72 Stat. 1275, effective January 1, 1959, deleted the "entertainment type" limitation in § 4141 and added, in a new § 4143, a specific exemption for certain kinds of communication equipment and components.

radio receiving set * * *." Treasury Regulations on Manufacturers Excise Taxes (1954 Code) § 40.4142–1(c)(1) (Pet. A16).[2] The evidence establishes that petitioner's receiver and converter perform precisely that function (Pet. A1–A2; R. 26–27, 92–93, 95, 98, 100, 119–120, 122). Hence they qualify as "chassis" within the meaning of § 4142.

2. Admittedly petitioner's articles have use only when combined to form a "radio receiving set" in the generic sense. The contention that they do not meet the "suitable for use" test of § 4142 is premised, not on the function of the articles, but upon the narrow definition petitioner would give to "Radio receiving sets" as that term is used in § 4141—namely, as including only sets that are "manufactured and sold as single, complete, operating units" (Pet. 14) and excluding sets consisting of separately purchased components assembled into an operating unit by the purchaser.[3] There is no basis in either the text or the history of the statute for giving "radio receiving sets" anything other than its ordinary meaning—*i.e.*, an aggregation of parts capable of receiving radio signals and converting them into sound. Petitioner's reliance on Rev. Rul. 56–388, 1956–2 Cum. Bull. 808 (Pet. A17–A19) is misplaced. That ruling held that a distributor who purchased radio and phonograph components from manufacturers and resold them in their

[2] For similarly broad definitions, dating back to 1932, see Treas. Reg. 46 (1932 ed.), Art. 45, and its amplifying ruling, S.T. 629, 1933–1 Cum. Bull. 398, 399; Treas. Reg. 46 (1940 ed.), § 316.61.

[3] Starting with that premise, petitioner then contends that its units are not of the type generally used in pre-assembled sets.

original packages to customers for home assembly and installation was not, simply because the units were sold in groups, "a manufacturer of a taxable radio * * * receiving set" and was therefore not subject to the tax imposed by § 4141. Patently, the basis of the ruling was not that the units, when assembled, would not constitute a "radio receiving set," but only that the distributor, not having assembled them, was not a "manufacturer" of a set.

CONCLUSION

The decision below is correct; there is no conflict; and the question is of no general importance. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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